United States Department of Labor
Employees' Compensation Appeals Board

G.S., Appellant	)	
and	)	**Docket No. 10-2231**
	)	**Issued: July 1, 2011**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRAION, Hines, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 1, 2010 appellant filed a timely appeal from a June 29, 2010 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on December 14, 2007.

FACTUAL HISTORY

On August 8, 2009 appellant, then a 49-year-old environmental maintenance cleaner, filed a traumatic injury claim (Form CA-1) alleging that on December 14, 2007 he sustained a

[1] 5 U.S.C. § 8101 *et seq.*

sciatic pinched nerve when he was disposing garbage and felt a sharp pain in his low back. He stated that his pinched nerve caused him back and groin pain which shot down to the knee. The employing establishment stated that appellant never reported his injury.

By letter dated October 6, 2009, the Office requested additional factual and medical evidence from appellant and asked that he respond to the provided questions within 30 days.

In a July 24, 2008 radiology report, Dr. Blake Gornowicz, a treating physician, found no acute fracture or subluxation with moderate, diffuse degenerative changes present, greatest at the T9-12 thoracic and L5 lumbar levels. In an August 20, 2008 radiology report, he found anterior flowing osteophytes over four contiguous vertebral bodies in the lower thoracic spine and a large anterior osteophyte in the L5 vertebral body. Dr. Gornowicz also noted mild disc desiccation at the L4-5 level with no significant loss of disc height and mild-to-moderate broad-based disc bulges at the L3-4, L4-5 and L5-S1 levels, greatest at L4-5.

In a June 16, 2009 medical report, Dr. Jonathan Stone, Board-certified in physical medicine and rehabilitation, reported that appellant started having back pain in 2008 when he was pushing a dumpster at work and heard his back crunch.[2] He noted that appellant was unable to continue his job and was terminated. Dr. Stone stated that the low back pain radiated into the bilateral groin and the mid-thigh. Pain was worse with sitting, standing, lying down, walking, twisting, a change in weather and leaning. Dr. Stone evaluated an August 2008 magnetic resonance imaging scan which revealed mild-to-moderate broad-based disc bulges at L3-4, L4-5 and L5-S1 levels, no significant loss of lumbar disc height and a large anterior osteophyte on the L5 vertebral body. The spine showed moderate diffuse degenerative changes greatest at the T9 to T12 and L5 levels. Dr. Ebby Varghese, Board-certified in physical medicine and rehabilitation, noted that he consulted with appellant on May 18, 2009 for lumbar epidural steroid injections to treat the back pain. He recommended bilateral sacroiliac joint injections.

In an October 19, 2009 note, appellant stated that he did not provide notice to his supervisor within 30 days because he did not know his injury was serious. He noted that he did not have any similar disability or symptoms prior to the incident.

In an undated letter, Dr. Thomas Randoll, a Board-certified doctor of osteopathic medicine, reported that appellant's original back injury occurred in December 2007 when he was lifting trash and felt his back go out. He stated that he did not treat appellant in 2007 but began seeing him for primary care on September 20, 2008. Dr. Randoll noted that diagnostic testing had been obtained which showed disc space narrowing and multiple levels of disc bulging. He further stated that appellant underwent physical therapy and steroid injections but continued to have back pain and required daily pain medication.

By decision dated November 18, 2009, the Office denied appellant's claim finding that the evidence did not establish that the claimed medical condition was related to the established work-related event.

[2] During the April 19, 2010 oral hearing, appellant's attorney argued that though Dr. Stone stated that appellant's back pain began in 2008, Dr. Stone probably meant December 2007.

On November 25, 2009 appellant, through his attorney, requested a telephone hearing before an Office hearing representative.

In a December 11, 2009 letter, Dr. Randoll repeated appellant's medical history as noted in his previous letter. He further stated that though he had not seen appellant in 2007, that based on the mechanism of injury and symptoms alleged, the December 14, 2007 incident, was more likely than not, the cause or an aggravation of his low back symptoms.

In a December 16, 2009 letter, appellant stated that his injury occurred in December 2007 when he was disposing trash at work and felt a sharp pain in his lower back. He informed his supervisor about the injury and reported that he was going to the emergency room. At the emergency room, appellant reported that the physician diagnosed him with a sciatic pinched nerve and he was restricted from lifting over 10 pounds, twisting and bending.

At the April 19, 2010 hearing, appellant testified that he had been employed by the employing establishment since November 1, 2007 and his injury occurred on December 14, 2007. He stated that he followed up at the Veteran's Administration emergency room on December 21, 2007 and noted that though he had chronic back pain for many years prior, it did not prohibit him from doing any work. Appellant further indicated that he did not have any back related injuries prior to December 2007 and had never experienced the sharp pain that he felt on December 14, 2007. He testified that he had no back injuries after December 14, 2007 but was unable to do his job. Appellant's attorney argued that there was enough medical evidence to send appellant for a second opinion evaluation. The record was held open for 30 days.

In Veteran's Administration Medical Center reports dated January 13 to December 14, 2009, Dr. Randoll noted that appellant continued to have back injections for his back pain. February 27, 2009 lab results for plasma, urine and blood were also submitted.

In a January 15, 2010 operative report, Dr. Varghese stated that appellant underwent a successful right L3 to S1 median branch radiofrequency ablation.

By decision dated June 29, 2010, an Office hearing representative affirmed the Office's November 18, 2009 decision. The hearing representative specifically noted that the medical reports did not warrant further medical development on the part of the Office and that there was no rationalized medical evidence establishing that the employment event resulted in a low back condition.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the

employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[6] Rationalized medical opinion evidence includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

ANALYSIS

The Office accepted that the December 14, 2007 incident occurred as alleged. The issue is whether appellant established that the incident caused a low back injury. The Board finds that he did not submit sufficient medical evidence to support that his back injury is causally related to the December 14, 2007 employment incident.[8] Appellant's decision to delay filing his claim for over a year and a half after his traumatic incident significantly hampers the ability of the Office to investigate the factual and especially the medical circumstances of his claim. It is more difficult to determine whether any physiological change might have resulted from appellant's episode of pain and a "crunch" sensation.

[3] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Elaine Pendleton*, *supra* note 3.

[6] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[7] *James Mack*, 43 ECAB 321 (1991).

[8] *See Robert Broome*, 55 ECAB 339 (2004).

In medical reports dated January 30 to December 14, 2009, Dr. Randoll noted that appellant continued to have injections for his back pain. In a December 11, 2009 letter, he reported that appellant's original back injury occurred in December 2007 when he was lifting trash and felt his back go out. Dr. Randoll stated that he did not treat appellant then but began seeing him for primary care on September 20, 2008. He noted that diagnostic testing had been obtained which showed disc space narrowing and multiple levels of disc bulging. Dr. Randoll further stated that based on the mechanism of injury and the symptoms after the incident, it was more likely than not, that the episode could have caused or prompted his low back symptoms.

The Board finds that the opinion of Dr. Randoll is not well rationalized. Dr. Randoll had no contact with appellant prior to September 20, 2008. While he stated that appellant's original back injury occurred in December 2007 when he was lifting trash, Dr. Randoll did not determine that appellant's actual diagnosed conditions were work related and did not offer a detailed, rationalized opinion explaining the causal relationship between appellant's condition and the December 14, 2007 employment incident.[9] Though he diagnosed appellant's injury, he failed to explain how appellant's employment incident contributed to or caused the low back condition. Dr. Randoll's broad statement that the episode more likely than not could have caused appellant's low back symptoms based on the mechanism of injury and symptoms after the incident, does not offer meaningful support to the conclusion that the December 14, 2007 incident caused an injury. Medical reports without adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.[10] The opinion of a physician supporting causal relationship must be based on a complete factual and medical background with affirmative evidence. The opinion must address the specific factual and medical evidence of record and explain the relationship between the diagnosed condition and the established incident or factor of employment.[11] Without medical reasoning explaining how appellant's employment incident caused the low back injury, Dr. Randoll's reports are insufficient to meet appellant's burden of proof.[12]

The remaining medical evidence of record is also insufficient to establish a causal relationship between appellant's back condition and the December 14, 2007 employment incident. Dr. Gornowicz's July 24, 2008 radiology report found degenerative changes at the T9-12 and L5 levels. The August 20, 2008 radiology report found ostephytes over four contiguous vertebral bodies in the lower thoracic spine and a larger anterior osteophyte in the L5 vertebral body along with disc desiccation at L4-5 and disc bulges at the L3-4, L4-5 and L5-S1 levels. Dr. Stone's June 16, 2009 report noted that appellant started having back pain in 2008 when he was pushing a dumpster and heard his back crunch.[13] He assessed appellant's radiology reports

[9] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[10] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[11] *See Lee R. Haywood*, 48 ECAB 145 (1996); *Robert Broome*, *supra* note 8.

[12] *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

[13] The Board notes that appellant does not claim an injury in 2008 and that Dr. Stone does not offer information or insight on a December 14, 2007 incident. *See supra* note 2.

and made the same findings as Dr. Gornowicz. Dr. Varghese consulted with appellant on May 18, 2009 for lumbar epidural steroid injections to treat his back pain. Appellant had surgery on January 15, 2010 and he reported that she underwent a successful right L3 to S1 median branch radiofrequency ablation.

While the above medical records addressed appellant's treatment and injury, the physicians failed to state any causal relationship between appellant's back condition and the December 14, 2007 employment incident. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[14] Without medical reasoning explaining how appellant's employment caused his back condition, the reports are not sufficient to meet his burden of proof.[15]

Appellant's attorney argues that the medical reports submitted are sufficient to establish his claim or to warrant further development of the evidence. Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the Office shares responsibility in the development of the evidence to see that justice is done, it is appellant's burden of proof to submit the evidence necessary to establish his claim.[16] The Board has reviewed the medical evidence and no physician has provided a clear opinion that the December 14, 2007 employment incident caused or aggravated appellant's back condition. The single, conclusory statement by Dr. Randoll that a causal connection probably exists is not sufficient to require further development by the Office.

Appellant himself has alleged that the December 14, 2007 employment incident caused his back injury. His statements however, do not constitute the medical evidence necessary to establish causal relationship. In the instant case, the record is without rationalized medical evidence establishing a causal relationship between the accepted employment incident and appellant's low back condition. Thus, appellant has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a traumatic injury on December 14, 2007 in the performance of duty, as alleged.

[14] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[15] *C.B.*, *supra* note 12.

[16] *Phillip L. Barnes*, 55 ECAB 426 (2004).

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board